

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE HERNANDO RODRIGUEZ,

Movant,

-v.-

UNITED STATES,

Respondent.

19 Civ. 11526 (KPF)

05 Cr. 960-2 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

By Order dated February 17, 2021, the Second Circuit Court of Appeals granted Movant Jose Hernando Rodriguez leave to file a successive motion pursuant to 28 U.S.C. § 2255. (Dkt. #4). There is no constitutional right to counsel in a proceeding brought under § 2255. *See, e.g., Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). However, the Criminal Justice Act (“CJA”) provides that a court may appoint counsel to an indigent person in a § 2255 proceeding when “the interests of justice so require.” 18 U.S.C.

§ 3006A(a)(2)(B). In deciding whether to exercise its discretion to appoint counsel under the CJA, courts in the Second Circuit consider the same factors as those applicable to requests for pro bono counsel made by civil litigants. *See, e.g., Bennett v. United States*, No. 03 Civ. 1852 (SAS), 2004 WL 2711064, at *7 (S.D.N.Y. Nov. 23, 2004). Those factors include the likelihood of success on the merits, the complexity of the legal issues, and the movant's ability to investigate and present the case. *See, e.g., Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 61-62 (2d Cir. 1986).

Here, the Second Circuit's order notes the complexity of the relevant legal issues to be raised in Movant's anticipated § 2255 motion: namely, the impact of the Supreme Court's recent decision in *United States v. Davis*, 139 S Ct. 2319 (2019), on Movant's criminal conviction for a violation of 18 U.S.C. § 924(j). (Dkt. #4). Accordingly, the Court finds that the appointment of counsel in this situation is justified. The Court appoints Georgia Hinde, who previously represented Movant in his underlying criminal case, as counsel to represent Movant for his anticipated § 2255 motion.

Movant's amended motion and supporting papers shall be due on or before March 16, 2021. The Government shall file its opposition, if any, on or before April 13, 2021. Movant's reply papers, if any, shall be due on or before April 27, 2021.

The Clerk of Court is directed to file this Order in Case Nos. 19 Civ. 11526 and 05 Cr. 960-2. The Court requests that Ms. Hinde transmit a copy of this Order to her client.

SO ORDERED.

Dated: February 22, 2021
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge